

1400 16th Street, N.W.
Suite 500
Washington, DC 20036
(202) 442-8922 office
(202) 483-9277 fax
jbadams@citizenscom.org

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JOHN B. ADAMS, Senior Attorney

CITIZENS
communications



DOCKET FILE COPY ORIGINAL

August 14, 1997

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Dear Mr. Caton:

Enclosed for filing is an original and four copies of the comments of Citizens Communications in response to the further notice of proposed rulemaking, FCC 97-254, in MD Docket No. 96-186 (rel. July 18, 1997). Also enclosed is a receipt copy.

Please date stamp the enclosed receipt copy and return it to the messenger delivering these materials.

Thank you for your attention to this matter.

Sincerely,

John B. Adams
Senior Attorney

CC: ITS

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
Implementation of Section 9 of the)
Communications Act)
)
Assessment and Collection of Regulatory)
Fees for Fiscal Year 1997)

MD Docket No. 96-186

COMMENTS OF CITIZENS COMMUNICATIONS

Citizens Utilities Company, on behalf of itself and its commercial mobile radio services (CMRS) subsidiaries (collectively, Citizens), by its attorney, hereby submits its comments in response to the Commission's further notice of proposed rulemaking (FCC 97-254) released July 18, 1997 (FNPRM)¹ in the above-captioned proceeding and shows as follows:

I. INTRODUCTION

Citizens Utilities Company, through divisions and subsidiaries, provides local telecommunications services, electric distribution, natural gas transmission and distribution, and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. Citizens Utilities Company subsidiary incumbent local exchange carriers (Citizens LECs) provide local exchange services in suburban and rural exchange areas in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West Virginia. In addition, Citizens Telecommunications Company, another Citizens Utilities Company

¹ 62 Fed. Reg. 40,036 (Jul. 25, 1997).

subsidiary, provides interexchange services throughout the nation and competitive local exchange services in several states. Another Citizens Utilities Company subsidiary, Electric Lightwave, Inc., provides competitive local exchange and interexchange services in Arizona, California, Idaho, Minnesota, Nevada, Oregon, Washington, and Utah. Of importance in this proceeding, Citizens Mohave Cellular Company provides cellular services in Arizona.

II. THE FNPRM

The Commission makes three proposals in the FNPRM. First, the Commission proposes to require CMRS licensees to keep for three years materials documenting the basis of their fee payments and to, upon request, make such materials available to the managing director within 30 days. Second, the Commission proposes to require all CMRS licensees claiming to be exempt non-profit entities to submit a current IRS determination of their exempt non-profit status. Third, the Commission proposes to routinely publish in the Federal Register the fees paid by each CMRS licensee and the number of units upon which such fee payment is based. Citizens comments on each proposal seriatim.

III. COMMENTS

Citizens has no objection to the Commission's first proposal regarding the maintenance of documentation to support fee payments. It seems reasonable for the Commission to require licensees to maintain such records and to make them available for inspection so that the Commission can ensure that licensees pay the correct fee. Such documentation should include a copy of the Form 159 submitted with the regulatory fee payment and billing records that demonstrate the number of units. Citizens, and likely most licensees, routinely keeps these records in the normal course of business. The Commission may also want to require licensees to

keep any work papers that show how the fee was calculated. Because the fee calculation is so straightforward, such documentation may be of little import.

Citizens also agrees with the Commission that it is appropriate to require CMRS licensees claiming exempt non-profit status to provide documentation in support of that claim. This requirement appears reasonable and should not unduly burden any such entity.

Citizens disagrees, however, with the Commission's third proposal to publish in the Federal Register the regulatory fee paid by each CMRS licensee along with the number of units upon which the fee is based. This is highly sensitive, proprietary information that would not be available for public inspection under the relevant Commission rules, 47 C.F.R. §§ 0.457 - 0.470, Exemption 4 of the FOIA,² and the competitive harm prong of *National Parks & Conservation Ass'n v. Morton*.³ Disclosing the number of units served by a CMRS provider would give actual and potential competitors information that they otherwise could not obtain and that they could use to make competitive decisions. The number of units is a proxy for the number of customers served by a licensee. It also indicates the size of the market and market penetration by each competitor, and could be used in conjunction with publicly available information to estimate margins. Such information is closely guarded by competitors.

Further, omitting the number of units and publishing only the regulatory fee paid results in the same competitive harm as publication of the number of units. This is so because the regulatory fee is simply the result of multiplying the number of units times a per unit charge. Thus, a competitor could easily calculate the number of units from the regulatory fee paid by a CMRS licensee.

² Freedom of Information Act, 5 U.S.C. § 552.

³ 498 F.2d 765, 770 (D.C. Cir. 1974).

The Commission's suggestion that licensees submitting confidential or proprietary information could seek confidential treatment of the portion that is proprietary ignores the fact that the very core information that the Commission proposes to publish is commercially sensitive and proprietary. It would do little to ease the Commission's burden or to achieve its "verification" goal to have every CMRS licensee file a request for confidential treatment for the very information that the Commission proposes to publish.

The Commission's rationale offers less support for the proposal than may first appear. While it may be true that publishing the information will allow licensees to verify that the Commission has accurately recorded their payments, this rationale begs the question of whether such verification is desired or necessary. Nor is it clear that such publication and the attendant ease of verification by the licensees will reduce the burden on the Commission's fee payment verification process. As an initial matter, the Commission will have a copy of the licensee's Form 159 that was prepared by the licensee and that indicates the amount of the fee paid. Except for transcription errors,⁴ there would seem to be little opportunity for errors to occur and, correspondingly, little need for licensees to verify the accuracy of the Commission's records.

Moreover, a licensee would likely be most concerned that the Commission had failed to properly record its payment where the Commission questions the propriety of the fee that its records indicate was paid by the licensee. In such instances, the licensee would, under the first proposal, provide relevant documentation, including a copy of its Form 159, to the Commission. During this process, any inaccuracies in the Commission's records quickly would come to light.

⁴ The transcription and compilation of fee data into a list for publication in the Federal Register would present yet another opportunity for transcription errors to occur.

Importantly, they would come to light in a manner that does not provide sensitive commercial information to competitors.

As an additional matter, the Commission does not have data on the number of units for each licensee⁵ and has not proposed to collect such data.⁶ Instead, it has only proposed to collect such data on an individual case basis and upon specific request by the Managing Director. Therefore, unless the Commission intends to calculate the number of units from the fee paid or to have the Managing Director annually request such information from each licensee, the Commission will not have the data to publish. This will serve to increase, rather than reduce, the burden on the Commission's fee collection process.

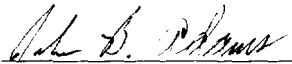
⁵ FNPRM at ¶2 (“[D]ocumentation on the number of pagers, cellular telephones or PCS units is not available in the Commission’s files . . .”). Citizens notes that such information is not included on Form 600.

⁶ Citizens is also filing corresponding comments on the Paperwork Reduction Act analysis.

In summary, Citizens agrees with the Commission's first two proposals to require licensees to upon request submit documentation supporting the regulatory fee paid and to require exempt non-profit entities to submit proof of their status. Citizens strongly disagrees, however, with the Commission's third proposal to publish in the Federal Register the fee paid by each CMRS licensee and the number of units upon which the fee is based. This is confidential, proprietary information. Disclosure of it to competitors will cause substantial competitive harm to licensees. Additionally, the Commission's third proposal will serve to increase, rather than decrease, the burden on the fee collection process.

Respectfully Submitted,

CITIZENS UTILITIES COMPANY

By: 
John B. Adams
Suite 500, 1400 16th Street, NW
Washington, DC 20036
(tel) 202-332-5922
(fax) 202-483-9277
Its Attorney

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